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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,584	12/19/2005	Manfred Korthauer	554-001.002	6467

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EXAMINER

EVANSKO, LESLIE J

ART UNIT

PAPER NUMBER

2854

MAIL DATE

DELIVERY MODE

09/11/2009

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/561,584

**Applicant(s)**

KORTHAUER, MANFRED

**Examiner**

Leslie J. Evanisko

**Art Unit**

2854

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 2-5, 8, 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 7 and 9-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Election/Restrictions**

1. Claims 2-5, 8, and 13-14 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 29, 2008.

### **Claim Rejections - 35 USC § 102**

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6-7, and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Korthäuer et al. (US 5,967,040).

With respect to claim 1, Korthäuer et al. teach a printing device 1 for printing sheet elements (i.e., labels 10) serially fed to the printing device comprising at least two separate feed devices 2a, 2b, 2c, 12a, 12b, 12c for each liner strip comprising the sheet elements 10, each feed device comprising a peeling-off device 6a, 6b, 6c for peeling the sheet elements from each liner strip, wherein the feed devices are associated with a print head 8, 13 with a thermal slat for printing each sheet element 10 supported by a counterpressure surface (the upper supporting surface of the elements 6a, 6b, 6c) and

comprising an application device 9, 11 for removing the printed sheet element from the print head and applying the printed sheet element to a product, characterized in that the counterpressure surface forms part of the print head so as to maintain a fixed relationship to the print head. Note that the counterpressure surface can be considered to “form” part of the print head as broadly recited since these two elements are part of a larger machine and have to be used together to result in proper printing of the labels. Furthermore, note that the counterpressure surface of Korthäuer et al. can broadly be considered to maintain a “fixed relationship” to the print head, at least during the printing operation in order to have an operable device that prints clearly.

With respect to claim 9, Korthäuer et al. teach a single print head 8, 13 is associated with the feed devices 2a, 2b, 2c, 12a, 12b, 12c and the association of the print head with the feed devices takes place via an adjustment device (i.e., the movement mechanism that allows for relative movement between print head and feed devices).

With respect to claims 6-7, Korthäuer et al. teach the feed devices 2a, 2b, 2c, 12a, 12b, 12c are arranged vertically, one on top of the other (see Fig. 1) and the application device is embodied as a stamp 11 that can move in a vertical direction.

With respect to claim 10, note Korthäuer et al. teach the application device 11 is coupled to the adjustment device (movement mechanism for 13).

With respect to claim 11, note Korthäuer et al. teach that the application device 11 and the adjustment device can be moved independently from the other along a single axis (i.e., the adjustment device moves along a horizontal axis while the application device moves independently along a vertical axis.

With respect to claim 12, note Korthäuer et al. teach that an additional application device (i.e., conveying strips 5a, 5b, 5c) removes the labels 10 from the feed devices 2a, 2b, 2c, 12a, 12b, 12c and feeds them to the print head 8, 13.

### **Response to Arguments**

4. Applicant's arguments filed May 11, 2009 have been fully considered but they are not persuasive of any error in the above rejections.

In particular, applicant argues that Korthäuer et al. fail to teach a counterpressure surface that forms part of the print head so as to maintain a fixed relationship to the print head. The Examiner disagrees with this argument. Again, the Examiner points out that the counterpressure surface can be considered to "form" part of the print head as broadly recited since these two elements are part of a larger machine and have to be used together to result in proper printing of the labels. Furthermore, note that the counterpressure surface of Korthäuer et al. can broadly be considered to maintain a "fixed relationship" to the print head, at least during the printing operation in order to have an operable device that prints clearly.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., no relative movement between the counterpressure surface and the print head) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### **Conclusion**

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Leslie J. Evanisko** whose telephone number is **(571) 272-2161**. The examiner can normally be reached on T-F 8:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on (571) 272-2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/ Leslie J. Evanisko /*

Leslie J. Evanisko

Primary Examiner

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lje

September 9, 2009